

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3429 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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OSMAN AMADMIYA SAIYAD

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for the Petitioner.

MR HL JANI, AGP, for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 13-1-98 passed by the Police Commissioner, Rajkot City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on four prohibition cases registered against the petitioner out of which three are pending trial whereas one is under investigation. Over and above these prohibition cases, the detaining authority has also placed reliance on the statements of three witnesses of the incidents dated 30-8-97, 19-10-97 and 14-12-97, whose identity has not been disclosed to the detenu claiming privilege of public interest conferred under section 9 (2) of the Act. As regards the incident of 30-8-97 is concerned, it is alleged that when the witness was going with his rickshaw, he was stopped and was beaten on the ground that he is the informant of the police. As regards incident of 19-10-97 is concerned, it is alleged that the detenu had gone with an aluminium tin of liquor to the witness and asked him to keep at his shop and on his refusal to do so, he was beaten. As regards the incident of 14-12-97 is concerned, it is alleged that the detenu and his associate had gone with the bags of liquor to the residence of the witness and while sitting on the Ota of the witness started selling the liquor. On the refusal to do so by the witness, he was beaten.

On all the aforesaid three occasions, people gathered on account of the beating by the detenu to the concerned witnesses. However, they started running helter-skelter because of the fear of the detenu who rushed towards the crowd with open knife and an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the

members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 13-1-98 is quashed and set aside. The detenu Osman Adammiya Saiyad is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. Writ to be sent to Special Jail, Bhuj.

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